

REMARKS

Applicants have considered the nonfinal Office Action of January 17, 2008. Claims 1, 4, 14, and 15 have been amended. New claim 23 has been added. Claims 1-8 and 11-23 are pending. Reconsideration is requested.

Applicants initially note that the Office Action was marked as having a shortened period of 1 month for a response. This appears to be incorrect; a first office action on the merits should have a period of 3 months for reply. See MPEP § 710.02(b) (only restrictions and inadvertent omissions have a shortened period of 1 month).

Claims 4, 14, and 15 were amended to clarify their meaning by removing the additional language "preferably 350,000". These amendments were made to preempt any rejections based on § 112. See MPEP § 2173.05(c)(I).

Claims 1-8 and 11-22 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Backman (U.S. Patent No. 6,441,096). Applicants traverse the rejection.

Applicants submit that the instant claims can be viewed as encompassing subject matter that is a subgenus of the genus of compositions disclosed in Backman, and that the claimed subgenus is not taught or suggested by Backman. MPEP § 2144.08.

In support of this argument, Applicants note that Backman discloses a large genus of compositions. The disclosures of Backman regarding the low molecular weight fraction, the high molecular weight fraction, the MFR₅, and the density, as claimed in independent claim 1, are also compared in the table below.

	Independent Claim 1	Backman	Overlap
low molecular weight fraction (wt%)	45-55	preferred range 44-50	45-50
high molecular weight fraction (wt%)	45-55	preferred range 50-56	50-55
MFR ₅ (g/10 min)	0.1-0.22	preferred range 0.15-0.8	0.15-0.22
density (kg/m ³)	≥952	broadest 930-965 preferred 943-955	952-965

Doing the math, the overlapping compositions of independent claim 1 are only 3% of the compositions disclosed by Backman. In addition, Backman's inventive Examples A-D do not fall within the literal scope of claim 1. Example A has a lower density than is claimed. Examples B-D have a higher MFR₅ than is claimed. Applicants submit that these circumstances lead to a conclusion that Backman would not support selecting the overlapping subgenus. Thus, the instant claims are not obvious.

In addition, Applicants have added new claim 23, which recites molecular weight ranges for the low molecular weight fraction and the high molecular weight fraction. In this respect, Backman discloses that the preferred lower limit for the molecular weight of the high molecular weight fraction is 3,500 or 4,000. In contrast, the lower limit for the molecular weight of the high molecular weight fraction of claim 23 is 300,000. Applicants submit that this is an additional reason for claim 23 to be allowed. Please note the polymer production processes shown in Table 2 of the instant application differs from that shown in Table 1 of Backman. The H₂/C₂ ratio and C₆/H₂ ratio of instant Table 2 correspond to GPR H₂/C₂ and GPR comon/C₂ in Backman and are relevant to the formation of the high molecular weight fraction. The H₂/C₂ ratio is higher than Backman in all cases. The C₆/H₂ ratio is lower than Backman in all cases. This process difference means Backman cannot be reasonably construed as producing a composition similar to the claimed compositions.

Applicants request withdrawal of the § 103(a) rejection based on Backman.

CONCLUSION


For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1-8 and 11-23) are now in condition for allowance.


In the event the Examiner considers personal contact advantageous to the disposition of this case, s/he is hereby authorized to call Richard M. Klein, at Telephone Number (216) 861-5582.

Respectfully submitted,

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April 11, 2008
Date


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